



FH

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/166627

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 12, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 20, 2015, at Appleton, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's prior authorization request for Speech Therapy services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By Letter: Laura Ronowski

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Outagamie County.

2. On April 23, 2015 the petitioner's provider submitted a prior authorization for an evaluation of swallowing and 26 weeks of one time per week oral function therapy sessions beginning April 27, 2015.
3. On May 28, 2015 the Department sent the petitioner letter stating that they modified the petitioner's prior authorization request to allow the evaluation of swallowing and three oral function therapy sessions instead of the 26 sessions requested.
4. On June 15, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. The petitioner is an 11 year old who is diagnosed with hypothyroidism, seizure disorder, and cerebral palsy. She has also been diagnosed with dysphagia, oral phase requiring G-Tube feeding to meet all of her nutritional needs. The provider requested the oral function therapy to address the petitioner's dysphagia, oral phase.
6. The petitioner has had the following prior authorization requests for speech therapy services approved:
  - 26 sessions from August 13, 2007 to May 8, 2008.
  - 26 sessions from May 9, 2008 to October 31, 2008.
  - 26 sessions from November 1, 2008 to April 30, 2009.
  - 4 sessions from May 1, 2009 to May 31, 2009.
  - 13 sessions from June 4, 2009 to August 28, 2009.
  - 52 sessions from September 15, 2009 to March 9, 2010.
  - 24 sessions from June 25, 2013 to February 6, 2014.
  - 24 sessions from March 26, 2014 to October 18, 2014.
  - 26 sessions from October 26, 2014 to April 25, 2015.
7. The petitioner has had some prior authorization requests for speech therapy that were denied, appealed, and sustained.
  - In August 2011 ALJ Duren sustained one prior authorization denial stated, "I am persuaded that the Department has correctly [] denied the services ought for oral motor/feeding therapy. The clinical evidence does not establish that any meaningful or significant gain in the functional ability to eat or control oral motor skills has been derived from a [speech language therapy] regimen. [] The Department correctly asserts that little or no improvement in such skills has been detected in the clinical record after over 162 therapy sessions treating this problem. Over the four prior years, and prior to this swallow study.
  - In November 2011 ALJ Gagnon issued a decision noting, "With regard to the swallow therapy, the issue essentially was covered in 2011. At that time a new study was done, a request was made for continued therapy, the [Department] denied the request, and a fair hearing decision upheld the denial. The current request describes the same goals and shows [the] petitioner to be at essentially the same status as in 2011."

### **DISCUSSION**

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). In determining whether to approve such a therapy request, the Department employs the generic prior authorization criteria found at § DHS 107.02(3)(e).

Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. “Medically necessary” services are those “required to prevent, identify or treat a recipient’s illness, injury, or disability. Wis. Adm. Code § DHS 101.03(96m)(a).

Included in the definition of “medically necessary” at § DHS 101.03(96m)(b) are the requirements that services be of proven medical value or usefulness, that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. Generally when speech therapy is requested for a school age child, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.02. It is up to the provider to justify the provision of the service. Wis. Adm. Code § DHS 107.02(3)(d)6.

When there have been past prior authorizations for speech therapy, to get additional speech therapy, a person essentially must show continued improvement in oral motor ability and/or communication. Speech Therapy extensions will be denied if: (1) “the recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period,” (4) “the recipient’s abilities are functional for the person’s present way of life,” and (6) “other therapies are providing sufficient services to meet the recipient’s functioning needs.” DHS § 107.18(3)(e)1, 4, and 6. It is up to the provider to justify the provision of the service. DHS § 107.02(3)(d)6. It is again up to the provider to justify the provision of the service. Wis. Adm. Code § DHS 107.02(3)(d)6.

In this case the issue is whether the petitioner has made sufficient progress to justify additional speech language therapy. The Department approved many sessions until 2011. At that time the Department began denying the sessions because the petitioner had not made sufficient progress. The petitioner appealed two of these denials, and two separate ALJs sustained those denials. There were no further prior authorization requests for speech therapy until 2013.

In 2013 the petitioner underwent bilateral hamstring and hip adductor surgical release. The petitioner suffered a decline in oral motor strength and endurance with subsequent reduction in bolus retrieval, manipulation and swallow initiation. Following this surgery between June 2014 and April 2015 the Department approved 74 speech therapy sessions. With this request, they also approved an additional three sessions for a total of 77 sessions.

I have reviewed the goals listed in this prior authorization request and previous prior authorization requests. The provider has slightly increased the petitioner’s therapy goals. The provider has also added new goals. For example, in the June 2013 request one goal stated was that the petitioner “will complete labial lingual and jaw strength, ROM, and endurance activities to retrieve, control and propel a thin liquid via straw for consumption on 80% of feeding trials within 10 seconds of liquid presentations.” In this request the stated goal is that the petitioner “will complete labial, lingual and jaw strength, ROM and endurance activities to retrieve, control and propel a thin liquid via straw for consumption, within 3 seconds of food presentations, on 80% of feeding trials.”

Despite the slight increase in goals, and new goals being added, the petitioner does not appear to have progressed. There is no indication that the petitioner has actually met the above-listed goal from June 2013. When the Department asked the provider to clarify the petitioner’s progress, the provider stated, “[the petitioner] asks to try just about every food that her family eats, and that the family is doing this within [the petitioner’s] safety limits. The petitioner is reported to eat 2-3 times per day. In addition, ‘Tongue lateralization emerging to side of food placement which allows her to demonstrate more consecutive chewing sequences resulting in increased endurance for oral feedings.’” This is nearly identical to what the provider stated about the petitioner’s progress in November 2014. At that time the provider stated that the petitioner “eats easily dissolvable foods when placed and held directly between her molars and is beginning to demonstrate tongue lateralization for food placed in the front of her month.

Tongue lateralization emerging to side of food placement which allows her to demonstrate more consecutive chewing sequences resulting in increased endurance for oral feedings. [the petitioner] eats orally 2-3 times per day at home.” There appears to have been no documentable progress from 2014 to this prior authorization request.

I note that I am evaluating this prior authorization request based upon the petitioner’s abilities at the time of the prior authorization request. The petitioner’s mother states that without this speech therapy, the petitioner skills have deteriorated in June, July, and August. That could be the case. If that is the case, and the provider feels that additional speech therapy is warranted, then the provider may submit a new prior authorization request for additional speech therapy. At the time of the prior authorization request there was not sufficient progress to justify additional speech therapy sessions.

### **CONCLUSIONS OF LAW**

The Department correctly modified the petitioner’s prior authorization request for Speech Therapy services.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

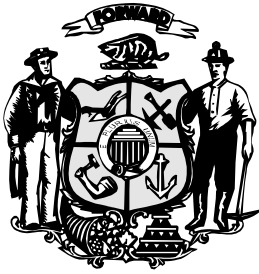
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The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of September, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 11, 2015.

Division of Health Care Access and Accountability